A **Marjan Petrovski (suing as the dependent and personal representative and/or administrator of the estate of Marco Stefan Petrovski, deceased) v Datuk Seri Utama IR Hj Idris bin Hj Haron (President of Melaka United Soccer Association (MUSA)) & Ors**

B

C HIGH COURT (MELAKA) — WRIT SUMMONS NO MA-22NCvC-2–01 OF 2019
MOHD RADZI ABDUL HAMID J
18 JUNE 2025

D *Contract — Agreement — Breach — Failure of football association to take personal accident insurance policy for footballer — Whether football association breached player's contract*

E *Contract — Breach — Breach of undertaking — Footballer struck by lightning and passed away — Plaintiff alleged that there was letter of undertaking by football association to pay unpaid salary — Whether letter of undertaking constituted valid and binding contract*

F *Damages (Personal Injury or Death) — Action for — Civil Law Act 1956, s 7 — Footballer struck by lightning and passed away — Compensation to family of a person for loss occasioned by his death — Whether claim for loss of support and aggravated damages ought to be allowed — Civil Law Act 1956 ss 7 & 8*

G *Tort — Negligence — Duty of care — Footballer struck by lightning and passed away — Dependent and personal representative of footballer brought negligence action against football association — Whether football association had duty of care towards its employees to provide safe working environment and adequate medical measures in event of emergencies*

H

The plaintiff in the present case was the father of a young footballer by the name of Marco Stefan Petrovski ('Stefan') who passed away after he was struck by lightning at a training field. The first to 15th defendants in the present case were the office bearers and/or the committee members of Melaka United Soccer Association ('MUSA'), a professional football club that represented the state of Melaka in professional football competitions in Malaysia and international. The plaintiff as a dependent and personal representative and/or administrator of the estate of Stefan brought the present claim for negligence, breach of contract and breach of undertaking against the defendants. With

I

respect to the claim of negligence, the issue that arose was whether MUSA as a football association that employed professional athletes had the duty of care towards its employees to provide a safe working environment and adequate medical measures in event of emergencies. As for the claim for breach of contract, the plaintiff contended that MUSA had breached cl 2 and Schedule B of the player's contract when it did not take for Stefan a personal accident insurance policy which would have had a RM120,000 coverage. The second defendant on the other hand contended that the plaintiff had already received AUD757.61 from MUSA as insurance proceeds on behalf of Stefan, thereby resolving any insurance claim. In relation to claim for breach of undertaking, the plaintiff contended that the second defendant had issued a letter of undertaking ('the letter') stating that Melaka Football Association would undertake to remit the unpaid salary, workers compensations and all other dues to the deceased's family. In response, the second defendant denied that the unpaid salaries meant all salaries payable until the end of Stefan's contract. The second defendant stated that the letter was issued to the Australian High Commission only for the purpose of securing quick repatriation of Stefan's remains to Australia. With regards to claim for dependency, the loss the plaintiff claimed to have suffered was the loss of monies that Stefan intended to pay towards the plaintiff's acquiring a 'nice apartment in Sydney'. The plaintiff had also claimed for aggravated damages amounting to RM500,000.

Held:

(1) The court found that MUSA had a duty of care towards Stefan to ensure the presence of a medical doctor and adequate equipment in the form of an automated external defibrillator ('AED') at the training session. MUSA breached that duty of care when it failed to ensure the presence of a medical doctor and AED. There was an additional breach of that duty when MUSA failed to adequately train its staff or team members in the use of AED and/or in responding to cardiac related emergencies and Stefan's death was materially contributed by that breach. There was a direct causation between Stefan's death and that breach of duty. The court found on the balance of probabilities that the breaches were not sufficiently disproved by the defendants. The court concluded therefore that MUSA's breaches were material contributing factors to Stefan's hypoxic-ischemic encephalopathy ('HIE') and subsequent death (see paras 47–48).

(2) Based on the evidence, the court found that the said AUD757.61 could not have been a payment under a personal accident insurance. It would be quite ridiculous to accept that Stefan was only entitled to AUD757.61 under a personal accident insurance with a coverage of RM120,000. It was incumbent on the defendants to answer the claim since it was pleaded as part of the plaintiff's case. The failure to give any answer only raised the inference that there was no such policy issued in favor of Stefan.

Therefore, the court found on the balance of probabilities that no such insurance was actually taken out for the benefit of Stefan and therefore constituted a breach of MUSA's contractual obligation under cl 2 and Schedule B of the player's contract. The court therefore awarded the sum of RM120,000 under this claim (see paras 53–54 & 82).

(3) What was evident to the court was that Stefan's money would not have gone towards supporting the plaintiff's living and subsistence. The court did not consider the loss of monies intended to be paid towards acquisition of an apartment amounted to loss of support. There was no evidence that without that monthly payment, the plaintiff would not have been able to maintain a means of living. After considering all arguments, the court found that an amount of AUD1,000 per month would be reasonable financial support taking into account Stefan's needs as a professional football player, expenses and savings. As provided under s 7(3)(iv)(d) of the Civil Law Act 1956 ('Act 67'), in the case of a person who was of the age of thirty years and below at the time of death, the number of years' purchase or multiplier shall be 16. Therefore AUD1,000 x 12 x 16 brought the total amount for loss of support at AUD 92,000 (see paras 61–63 & 82).

(4) For the claim of aggravated damages, the plaintiff referred to the cases of *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784 ('Sambaga Valli'), and *Koperal Zainal bin Mohd Ali & Ors v Selvi a/p Narayan (joint administrator and dependant of Chandran a/l Perumal, deceased) & Anor* [2021] 3 MLJ 365; [2021] 6 CLJ 157 ('Koperal Zainal bin Mohd Ali'). In each of those cases, the courts found that there were deliberate and conscious acts by the defendants, oppressive in one and inhumane in the other, which were not present in the present case. Additionally, the case of *Sambaga Valli* was not for claim for negligence but for conversion of property and detinue. On another point, the plaintiff's claim for loss of support was brought under s 7 of Act 67. The plaintiff's pleading did not frame a claim under s 8 of Act 67 which was the case in *Koperal Zainal bin Mohd Ali*. The plaintiff was bound by his pleadings and for those reasons the plaintiff's claim for aggravated damages had no basis (see paras 64 & 68–69).

(5) The letter was not issued to the plaintiff and it was a principle of contract law that apart from privity there must be consideration moving between the plaintiff and the second defendant and/or MUSA for the undertaking to be a binding contract. A document could not be regarded as a valid contract under the law when the requirements to constitute a binding contract between the concerned parties were absent (see paras 75 & 77).

(6) In any event, the court found that the proper and reasonable meaning to be given to the words unpaid salary must mean the salary that Stefan

would have otherwise earned for the month of April 2016 and nothing more. It would be very unreasonable to expect any football club to compensate a player's estate the full amount of salaries for the full term of the contract when the club had lost his service upon the player's death. Such an obligation would impose an onerous financial obligation on MUSA and it was a matter that should have been negotiated and included in Stefan's player's contract. Moreover, such an undertaking would constitute a variation of the contract, requiring approval from both the second defendant and MUSA. The court also did not accept that the second defendant personally made such a promise, whether in the letter or during the meeting with the plaintiff and SP7. For the above reasons, the court did not find that the plaintiff had discharged his burden of proving that the said undertaking was a valid and binding contract between MUSA and/or the second defendant and the plaintiff (see paras 78–79).

[Bahasa Malaysia summary

Plaintif dalam kes semasa adalah bapa kepada seorang pemain bola sepak muda bernama Marco Stefan Petrovski ('Stefan') yang meninggal dunia selepas dipanah petir di padang latihan. Defendan pertama hingga ke-15 dalam kes semasa ialah pemegang jawatan dan/atau ahli jawatankuasa Persatuan Bola Sepak Melaka United ('MUSA'), sebuah kelab bola sepak profesional yang mewakili negeri Melaka dalam pertandingan bola sepak profesional di Malaysia dan antarabangsa. Plaintif sebagai wakil tanggungan dan peribadi dan/atau pentadbir harta pusaka Stefan membawa tuntutan semasa terhadap defendan-defendan untuk kecuaian, pelanggaran kontrak dan pelanggaran aku janji. Berkenaan dengan dakwaan kecuaian, isu yang timbul ialah sama ada MUSA sebagai persatuan bola sepak yang menggaji atlet profesional mempunyai kewajipan berjaga-jaga terhadap pekerjanya untuk menyediakan persekitaran kerja yang selamat dan langkah perubatan yang mencukupi sekiranya berlaku kecemasan. Bagi tuntutan pelanggaran kontrak, plaintif berhujah bahawa MUSA telah melanggar klausa 2 dan Jadual B Kontrak Pemain apabila ia tidak mengambil untuk Stefan polisi insurans kemalangan diri yang akan mempunyai perlindungan berjumlah RM120,000. Defendan kedua sebaliknya berhujah bahawa plaintif telah menerima AUD757.61 daripada MUSA sebagai hasil insurans bagi pihak Stefan, dengan itu menyelesaikan apa-apa tuntutan insurans. Berhubung dengan tuntutan pelanggaran aku janji, plaintif berhujah bahawa defendan kedua telah mengeluarkan surat aku janji ('surat tersebut') yang menyatakan bahawa Persatuan Bola Sepak Melaka mengaku janji untuk membayar gaji yang belum dibayar, pampasan pekerja dan semua bayaran lain kepada keluarga si mati. Defendan kedua pula menafikan bahawa gaji yang tidak dibayar bermakna semua gaji perlu dibayar sehingga tamat kontrak Stefan. Defendan kedua menyatakan bahawa surat tersebut dikeluarkan kepada Pesuruhjaya Tinggi Australia hanya untuk tujuan mendapatkan penghantaran balik jenazah Stefan

ke Australia dengan cepat. Berkenaan dengan tuntutan tanggungan, kerugian yang didakwa oleh plaintif adalah kehilangan wang yang Stefan ingin bayar bagi membolehkan plaintif mendapatkan 'sebuah pangsapuri yang bagus di Sydney'. Plaintif juga telah menuntut ganti rugi teruk berjumlah RM500,000.

Diputuskan:

(1) Mahkamah mendapati MUSA mempunyai kewajipan berjaga-jaga terhadap Stefan untuk memastikan kehadiran doktor perubatan dan peralatan yang mencukupi dalam bentuk automated external defibrillator ('AED') pada sesi latihan. MUSA melanggar kewajipan berjaga-jaga tersebut apabila gagal memastikan kehadiran doktor perubatan dan AED. Terdapat pelanggaran tambahan kewajipan tersebut apabila MUSA gagal melatih kakitangan atau ahli pasukannya dengan secukupnya dalam penggunaan AED dan/atau dalam bertindak balas terhadap kecemasan berkaitan jantung dan kematian Stefan disumbangkan secara material oleh pelanggaran tersebut. Terdapat sebab langsung antara kematian Stefan dan pelanggaran kewajipan tersebut. Mahkamah mendapati di atas imbangan kebarangkalian bahawa pelanggaran tersebut tidak cukup disangkal oleh defendan-defendan. Oleh itu, mahkamah membuat kesimpulan bahawa pelanggaran oleh MUSA adalah faktor penyumbang material kepada hypoxic-ischemic encephalopathy ('HIE') dan seterusnya kematian Stefan (lihat perenggan 47–48).

(2) Berdasarkan keterangan, mahkamah mendapati AUD757.61 tersebut tidak mungkin merupakan bayaran di bawah insurans kemalangan diri. Agak tidak masuk akal untuk menerima bahawa Stefan hanya layak mendapat AUD757.61 di bawah insurans kemalangan diri yang mempunyai perlindungan berjumlah RM120,000. Adalah menjadi kewajipan kepada defendan-defendan untuk menjawab tuntutan tersebut kerana ia telah diplid sebagai sebahagian daripada kes plaintif. Kegagalan untuk memberikan apa-apa jawapan hanya menimbulkan kesimpulan bahawa tidak ada polisi insurans sedemikian yang dikeluarkan bagi pihak Stefan. Oleh itu, mahkamah mendapati di atas imbangan kebarangkalian bahawa tiada insurans sedemikian sebenarnya diambil bagi kepentingan Stefan dan oleh itu merupakan pelanggaran kewajipan kontrak MUSA di bawah klausa 2 dan Jadual B kontrak pemain. Oleh yang demikian, mahkamah menganugerahkan jumlah RM120,000 di bawah tuntutan ini (lihat perenggan 53–54 & 82).

(3) Apa yang terbukti kepada mahkamah ialah wang Stefan tidak akan digunakan untuk menampung kehidupan dan sara hidup plaintif. Mahkamah tidak menganggap kehilangan wang yang dimaksudkan untuk dibayar ke arah pemerolehan sebuah apartmen berjumlah kepada kehilangan sokongan. Tiada keterangan bahawa tanpa bayaran bulanan

tersebut, plaintif tidak akan dapat meneruskan kehidupannya. Selepas mempertimbangkan semua hujah, mahkamah mendapati bahawa jumlah AUD1,000 sebulan adalah sokongan kewangan yang munasabah dengan mengambil kira keperluan Stefan sebagai pemain bola sepak profesional, perbelanjaan dan simpanan. Seperti yang diperuntukkan di bawah s 7(3)(iv)(d) Akta Undang-Undang Sivil 1956 ('Akta 67'), dalam kes seseorang yang berumur tiga puluh tahun dan ke bawah pada masa kematian, bilangan tahun pembelian atau pengganda ialah 16. Oleh itu, AUD1,000 x 12 x 16 membawa kepada jumlah keseluruhan bagi kehilangan sokongan sebanyak AUD92,000 (lihat perenggan 61–63 & 82).

(4) Bagi tuntutan ganti rugi teruk, plaintif merujuk kepada kes *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784 ('Sambaga Valli'), dan *Koperal Zainal bin Mohd Ali & Ors v Selvi a/p Narayan (joint administrator and dependant of Chandran a/l Perumal, deceased) & Anor* [2021] 3 MLJ 365; [2021] 6 CLJ 157 ('Koperal Zainal bin Mohd Ali'). Dalam setiap kes tersebut, mahkamah mendapati bahawa terdapat tindakan yang disengajakan dan disedari oleh defendan-defendan, yang menindas dalam kes pertama dan tidak berperikemanusiaan dalam kes yang satu lagi, yang tidak terdapat dalam kes semasa. Selain itu, kes *Sambaga Valli* bukan untuk tuntutan kecuaian tetapi untuk penukaran harta dan detinu. Satu lagi perkara, tuntutan plaintif untuk kehilangan sokongan telah dibawa di bawah s 7 Akta 67. Pliding plaintif tidak merangka tuntutan di bawah s 8 Akta 67 seperti di dalam kes *Koperal Zainal bin Mohd Ali*. Plaintif terikat dengan plidingnya dan atas sebab tersebut tuntutan plaintif untuk ganti rugi teruk tidak mempunyai asas (lihat perenggan 64 & 68–69).

(5) Surat tersebut tidak dikeluarkan kepada plaintif dan ia merupakan prinsip undang-undang kontrak bahawa selain daripada priviti, harus ada balasan yang berpindah antara plaintif dan defendan kedua dan/atau MUSA untuk aku janji tersebut menjadi kontrak yang mengikat. Sesuatu dokumen tidak boleh dianggap sebagai kontrak yang sah di bawah undang-undang apabila keperluan untuk membentuk kontrak yang mengikat antara pihak-pihak yang berkenaan tidak wujud (lihat perenggan 75 & 77).

(6) Dalam apa jua keadaan, mahkamah mendapati bahawa makna yang wajar dan munasabah untuk diberikan kepada perkataan gaji yang tidak dibayar adalah gaji yang sepatutnya diterima oleh Stefan untuk bulan April 2016 dan tidak lebih daripada itu. Adalah sangat tidak munasabah untuk mengharapkan mana-mana kelab bola sepak membayar pampasan kepada waris pemain dengan jumlah gaji penuh untuk tempoh penuh kontrak sedangkan kelab tersebut kehilangan perkhidmatannya selepas kematian pemain tersebut. Kewajipan sedemikian akan mengenakan

kewajipan kewangan yang membebankan kepada MUSA dan ia adalah perkara yang sepatutnya dirundingkan dan dimasukkan ke dalam kontrak pemain Stefan. Selain itu, aku janji sedemikian akan membentuk variasi kontrak, yang memerlukan kelulusan daripada kedua-dua defendan kedua dan MUSA. Mahkamah juga tidak menerima bahawa defendan kedua secara peribadi membuat janji sedemikian, sama ada dalam surat tersebut atau semasa pertemuan dengan plaintif dan SP7. Atas sebab-sebab di atas, mahkamah tidak mendapati bahawa plaintif telah melepaskan bebannya untuk membuktikan bahawa aku janji tersebut adalah kontrak yang sah dan mengikat antara MUSA dan/atau defendan kedua dan plaintif (lihat perenggan 78–79).]

Cases referred to

All Ettifiaq Club v Nairn Sliti (Case 2021/A/7916) (refd)

Au Meng Kai v Gan See Sin (sebagai bapa yang sah dan penanggungan kepada Gan En Teck, si mati, untuk diri sendiri) & Anor [2021] MLJU 2300; [2021] CLJU 1933, HC (refd)

Brady v Sunderland Association Football Club Limited and others [1998] Lexis Citation 3525, QBD (refd)

Chan Chin Ming & Anor v Lim Yok Eng [1994] 3 MLJ 233; [1994] 3 CLJ 687, SC (refd)

Cheah Kim Boon v WFC Properties Sdn Bhd & Anor [2020] MLJU 1332; [2020] MLRHU 1060, HC (refd)

Hamed v Mills and another [2015] EWHC 298 (QB); [2015] All ER (D) 261 (Feb), QBD (refd)

Hasan bin Datolah v Kerajaan Malaysia [2010] 2 MLJ 646; [2010] 5 CLJ 764, CA (refd)

Ittihad FC v Aleksander Prijovic (Arbitration Case 2021/A/7680) (refd)

Koperal Zainal bin Mohd Ali & Ors v Selvi a/p Narayan (joint administrator and dependant of Chandran a/l Perumal, deceased) & Anor [2021] 3 MLJ 365; [2021] 6 CLJ 157, FC (distd)

Kwan Sun Ming v Chak Chee Hing [1965] 1 MLJ 236; [1964] CLJU 70; [1964] 1 LNS 70, FC (refd)

Lok Kok Beng & 49 Ors v Loh Chiak Eong & Anor [2015] 4 MLJ 734; [2015] 7 CL J 1008, FC (refd)

Muhamad bin Hashim v Teow Teik Chai & Anor [1996] 4 MLJ 7; [1996] 1 CLJ 615, HC (refd)

Nairn Sliti v Al Ettifaq Club (Arbitration Case 2021/A/7878) (refd)

PP v Manimaran a/l Mohana Sundram & Anor [2018] MLJU 1035; [2018] MLRHU 1570, HC (refd)

Qi Qiaoxian (claiming as the mother and dependent of Qi Xiangqing, deceased) & Anor v Sunway Putra Hotel Sdn Bhd [2024] MLJU 732; [2024] 5 CLJ 734, CA (refd)

Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and

another appeal [2018] 1 MLJ 784, CA (distd)
Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd [1968] 1 WLR 1776; [1968] 5 KIR 401 (refd)
Subramaniam v PP [1956] 1 WLR 965, PC (refd)
Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd and others (No 2) [1986] 1 All ER 897; [1986] HKC 20; [1986] 1 WLR 392; [1986] 130 Sol Jo 186; [1986] 83 LS Gaz 869; [1986] AC 519, PC (refd)
Tan Ah Kek & Anor v Wong Thang Song & Anor [2016] 2 MLJ 686; [2016] CLJU 232; [2016] 1 LNS 232, CA (refd)
Ting Jie Hoo v Lian Soon Hing Shipping Co [1990] 2 MLJ 56; [1990] 3 CLJ 267, HC (refd)
Wu Siew Ying t/a Fuh Lin Bud-Grafting Centre v Gunung Tunggal Quarry & Construction Sdn Bhd & Anor [2011] 2 MLJ 1; [2011] 1 CLJ 409, FC (refd)
Wyong Shire Council v Shirt (1980) 146 CLR 40; (1980) 60 LGRA 106; (1980) 29 ALR 217; (1980) 54 ALJR 283, HC (refd)
Yap Ami & Anor v Tan Hui Pang [1982] 2 MLJ 316; [1982] CLJ Rep 367, FC (refd)

Legislation referred to

Civil Law Act 1956 ss 7, 7(3)(iv)(d), 8
Evidence Act 1950 ss 32, 73A
Federal Constitution art 13

Eng Kar Wei (with Ryan Chu) (Lee & Poh Partnership) for the plaintiff.
Syed Nur Aiman bin Syed Abdul Hamid (The Chambers of Syed Nur Aiman) for the defendants.

Mohd Radzi Abdul Hamid J:

INTRODUCTION

[1] This is a decision at the end of a full trial of case concerning a young professional footballer Marco Stefan Petrovski ('Stefan') who died after he was struck by lightning at a training field. The plaintiff, the deceased's father brought this claim against the defendants as a dependent and personal representative and/or administrator of the estate claiming negligence, breach of contract and breach of undertaking against the defendants.

[2] Initially, the plaintiff brought this claim against the first to 15th defendants, who are office bearers and/or the committee members of Melaka United Soccer Association ('MUSA'), a professional football club that represents the state of Melaka in professional football competitions in Malaysia and international, and the 16th to 34th defendants, who are the office bearers and/or executive members of the Football Association of Malaysia ('FAM'). FAM is the Malaysian affiliate member of Federation Internationale de

Football Association ('FIFA'), and is the licensing authority responsible for the granting of licenses to football clubs in Malaysia, including MUSA, to participate in football leagues, matches, tournaments and/or competitions.

[3] The plaintiff's claim against the 16th to 34th defendants was withdrawn on 29 November 2019, and at the trial, the proceedings continued only against the first to 15th defendants.

[4] The plaintiff called seven witnesses, whilst the defendants called three witnesses.

BACKGROUND

[5] Stefan was an 18 years old young professional football player who played for MUSA. Stefan had a player's contract with MUSA dated 1 February 2016. On 5 April 2016 Stefan and his team attended a training session at an open field namely Kerubong 10 Field Training Facilities near the Hang Jebat Stadium, Melaka.

[6] At approximately 4.30pm the weather changed and it started to rain. At around 5pm the rain got heavier and the team's coach decided to end the training. As Stefan began to walk off the field he was struck by lightning, fell unconscious and had a cardiac arrest.

[7] Apart from Stefan, an employee of MUSA ('SD2') who was the physiotherapist for the club was also struck by the force of the lightning. SD2, however, remained conscious despite being struck down. After regaining his composure, he noticed Stefan was unconscious and immediately performed cardiopulmonary resuscitation ('CPR') for two minutes.

[8] Unfortunately, Stefan did not regain consciousness and was then transported to the Melaka General Hospital in a private car as no ambulance was called. According to SD2, he also carried out CPR on Stefan while they were in the car.

[9] It is not a disputed fact that there was no automated external defibrillator ('AED') equipment present at the training session. AED is a portable, life-saving device designed to treat people experiencing sudden cardiac arrest. It is a medical device designed to analyse the heart rhythm and deliver an electric shock to victims of ventricular fibrillation to restore the heart rhythm to normal.

[10] For that reason Stefan was not given any other resuscitation measures apart from CPR until he was admitted to the Melaka General Hospital where

return of spontaneous circulation of the heart was achieved. Unfortunately, Stefan passed away on 1 May 2016 after he was transferred to the Putra Specialist Hospital, Melaka. Stefan's cause of death was described as hypoxic ischemic encephalopathy ('HIE'). HIE is a severe brain injury resulting from a lack of oxygenated blood flow to the brain, leading to the death of brain cells.

THE PLAINTIFF'S CLAIM

[11] The plaintiff's causes of action against the defendants are based on:

(a) the tort of negligence;

(b) breach of contract; and

(c) breach of undertaking.

[12] Under the first cause of action, the plaintiff claims that the defendants had breached their duty of care towards Stefan when they failed to:

(a) ensure that the training session was equipped with safety measures such as an AED in the event of any injury resulting in cardiac arrest;

(b) take adequate steps to end the training session when it began to rain with signs of thunderstorm; and

(c) ensure the attendance of a doctor at the training session and/or that MUSA's staff and team members was adequately trained to render emergency assistance and resuscitation to players in the event of a cardiac arrest.

[13] The plaintiff alleges that MUSA failed or neglected to comply with the guidelines set forth by FIFA, the governing body of world football. Specifically the plaintiff claims that MUSA had failed to implement the FIFA Emergency Medical Manual Guideline (2nd Ed, 2015) ('FIFA Guideline') on the provision of immediate basic (CPR together with AED) and advanced life support algorithm for a minimum period of 30 minutes to players in the event of cardiac arrest due to lightning. Apart from that, the plaintiff alleged that MUSA failed to adhere to FIFA guidelines concerning a predetermined lightning safety plan, the 30–30 lightning rule, and the requirement to equip the training ground with lightning protection devices such as a lightning rod.

[14] Under the second cause of action, the plaintiff claims that MUSA had breached its terms of contract with Stefan when it failed to carry out its obligations to observe rules and regulations for games that are organised by FAM, Asian Football Confederation ('AFC') or FIFA. Specifically, it is claimed that MUSA had failed to abide by the FIFA Guideline. Apart from that the plaintiff also claimed that MUSA had breached cl 2.3 and Schedule B of the

player's contract when it failed to purchase a personal accident policy in favor of Stefan.

[15] Under the third cause of action, the plaintiff seeks to enforce an undated letter of undertaking issued by the second defendant to the Australian High Commission wherein it was purportedly stated that the Melaka Football Association will pay Stefan's balance salary for the remaining term of the player's contract.

[16] Based on those causes of action, the plaintiff seeks the following damages:

(a) AUD576,000/the equivalent sum in Malaysian Ringgit for loss of support;

(b) RM120,000 for breach of contract in failing to purchase the PA policy;

(c) AUD222,000 the equivalent sum in Malaysian Ringgit for breach of contract and breach of undertaking; and

(d) RM500,000 for aggravated damages.

CLAIM FOR TORT OF NEGLIGENCE

The plaintiff's case

[17] The plaintiff contends that MUSA had a duty care towards its players including Stefan and that duty is to provide a safe place of work and to take reasonable care of the well-being of its players.

[18] The plaintiff asserts that FAM had the duty to adopt and incorporate the FIFA Guideline and to enforce the same Guideline on all football clubs or associations registered with it. Stefan's player's contract stipulated that all terms and conditions as determined in any other Match Rules and Regulations that are organised by FAM, AFC or FIFA have to be observed by the club or association and the player. Thus, MUSA being a member under FAM is obliged to follow the FIFA Guideline.

[19] The plaintiff claims that FAM neglected to adopt and enforce the FIFA Guidelines on MUSA, thereby depriving Stefan of the appropriate medical care he should have received during a cardiac arrest emergency.

[20] Apart from that it was also the plaintiff's contention that MUSA failed to comply with the FAM Club Licensing Regulations 2017 where Regulation 9.2 requires the presence of a doctor at training sessions. It is an undisputed fact

that there was no doctor in attendance at the training session and therefore Stefan was deprived of proper medical care when he was struck by lightning.

[21] Reference was made to the decisions in, inter alia, *Lok Kok Beng & 49 Ors v Loh Chiak Eong & Anor* [2015] 4 MLJ 734; [2015] 7 CLJ 1008; *Ting Jie Hoo v Lian Soon Hing Shipping Co* [1990] 2 MLJ 56; [1990] 3 CLJ 267; *Brady v Sunderland Association Football Club Limited and others* [1998] Lexis Citation 3525; *Wyong Shire Council v Shirt* (1980) 146 CLR 40; (1980) 60 LGRA 106; (1980) 29 ALR 217; (1980) 54 ALJR 283; *Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd* [1968] 1 WLR 1776; [1968] 5 KIR 401; *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd and others (No 2)* [1986] 1 All ER 897; [1986] HKC 20; [1986] 1 WLR 392; [1986] 130 Sol Jo 186; [1986] 83 LS Gaz 869; [1986] AC 519; *Hamed v Mills and another* [2015] EWHC 298 (QB); [2015] All ER (D) 261 (Feb); and *Qi Qiaoxian (claiming as the mother and dependent of Qi Xiangqing, deceased) & Anor v Sunway Putra Hotel Sdn Bhd* [2024] MLJU 732; [2024] 5 CLJ 734.

The defendants' case

[22] The defendants argue on the other hand that the FIFA Guideline do not apply to FAM or MUSA because they do not have any force until it is formally recognised or adopted as part of their own guidelines, rules or regulations. The FIFA Guideline is a unilateral guideline issued by FIFA and are not incorporated into FIFA statutes or codes that are binding on its members. The matter was explained by the second defendant (SD1) who was at the material time the Deputy President and General Manager of MUSA. The second defendant stated that until the FIFA Guideline is formally adopted by FAM and then enforced by FAM on its members, the Guideline will not be binding on FAM members.

[23] On the issue of medical care rendered to Stefan after he was struck by lightning the defendants argue that SD2 had administered treatment to Stefan according to reasonable standard of care and skill. SD2 who was also struck by lightning had administered CPR to Stefan on field and enroute to the General Hospital. That CPR had contributed to Stefan's normal heart pumping again. Stefan's death was therefore an Act of God that was not foreseeable.

[24] Reference was made to the decisions, inter alia, in *Kwan Sun Ming v Chak Chee Hing* [1965] 1 MLJ 236; [1964] CLJU 70; [1964] 1 LNS 70; *Ittihad FC v Aleksander Prijovic* (Arbitration Case 2021/A/7680), Award of 11 April 2022; *Nairn Sliti v Al Ettifaq Club* (Arbitration Case 2021/A/7878) and *All Ettifiaq Club v Nairn Sliti* (Case 2021/A/7916), Award of 27 April 2022; and *Hasan bin Datolah v Kerajaan Malaysia* [2010] 2 MLJ 646; [2010] 5 CLJ 764.

Court's deliberations and findings

[25] To begin with, this court accepts the evidence of the second defendant who was the office bearer of MUSA and FAM at the relevant time that whether such FIFA Guideline is implemented by FAM and then by the respective State football associations is dependent on whether FAM had adopted such Guideline as part of its own and then direct the same to be enforced by the respective State football associations. What is clear to this court is that at the relevant time (during submission after the trial, this court was informed by counsel for the defendant that the 2020 Edition of the FAM Club Licensing Regulations now requires the presence of a doctor and/or physiotherapist at all training sessions and a AED device must be available at all training sessions). FAM did not incorporate the FIFA Guideline as part of its own and consequently that Guideline was not enforced onto the member State associations as a rule or regulation.

[26] However, after considering the facts and arguments this court finds that the questions of whether a duty of care was owed to Stefan and whether there was a breach of that duty are not dependent on the issue whether MUSA or FAM failed to adopt the FIFA Guideline but rather whether MUSA as a football association who employed professional athletes had the duty of care towards its employees to provide a safe working environment and adequate medical measures in event of emergencies.

[27] Now, it is well accepted that professional athletes in physical sports both on and off field subject themselves to intense mental and physical exertion. For footballers they undergo intense physical exertion for at least 90 minutes in any game. It is now a recognised medical phenomenon that athletes like professional footballers assume the risk of sudden cardiac arrest whilst playing football or soon after. This court takes judicial notice of the study done by Saarland University entitled 'FIFA Sudden Death Registry (FIFA-SDR): a prospective, observational study of sudden death in worldwide football from 2014 to 2018' which was published in the British Journal of Sports Medicine in 2020 (see https://en.wikipedia.org/wiki/List of association footballers who died after on-field incidents) which found that that there had been 617 cases of cardiac arrests whilst playing football or shortly after between the period of 2014 to 2018. Those figures have grown since.

[28] According to FIFA sudden cardiac arrest ('SCA') can be caused by a number of reasons that include inborn heart muscle diseases or anomalies to viral infections of the upper respiratory tract — such as the flu — that, in combination with strenuous exercise for around three to five days, can inflame the heart muscle. Medications, drugs and stimulants may also considerably heighten the risk of a person suffering an SCA when exercising. Also possible,

albeit very uncommon, is an SCA caused by an object such as the ball hitting the central chest area at a particularly vulnerable time in the heart cycle (see https://inside.fifa.com/health-and-medical/education-awareness/sudden-cardiac-arrest).

[29] Therefore, based on FIFA's information sudden cardiac arrest amongst professional footballers is a matter that is not necessarily caused solely by internal factors such as the player's health condition but can also be caused by external factors which. In this court's view such external factors can include environmental conditions such as lightning. In fact, FIFA recognises that injuries in football can also be caused by environmental factors such as altitude, cold, heat and lightning (see FIFA's Guideline).

[30] It should therefore be within the reasonable knowledge and foreseeability of football clubs and associations such as MUSA that sudden cardiac arrest amongst professional footballers is a risk that cannot be regarded as something that is too remote to occur. Employers of professional athletes have the duty to ensure that in the event such incident occurs during the performance of the athlete's duties adequate emergency medical measures are available to achieve effective resuscitation until brought to hospital for fuller care and treatment.

[31] It does not matter that the cause of the cardiac arrest may not be foreseeable but what matters more is that when sudden cardiac arrest is caused by some injury during a training session under the control and/or management of the club or association then the club or association has the duty to ensure that the player is given reasonable and adequate medical assistance in the event of an emergency until full treatment is rendered in a health facility. To put it in another way, the duty is not to prevent a cardiac arrest from happening to a player but rather to ensure that the payer is not deprived of reasonable and adequate immediate medical assistance in the event of cardiac emergency.

[32] In the court's view, that duty is self-evident and should not depend on the existence of specific guidelines or regulations from FIFA, AFC, or FAM. There is no impediment for football associations such as MUSA to adopt its own practices and guidelines in tandem with reasonable standards of good practice for provision of emergency medicaJ support to professional athletes under their employment. Failing to do so is to disregard the player's reasonable right to have access to adequate emergency medical treatment. As admitted by the second defendant, even though FAM had not enforced the FIFA Guidelines on local clubs or associations, there was no restriction preventing a football club or association from adopting and implementing their own set of guidelines for medical emegencies.

[33] Coming back to Stefan, he was training with his team on 15 April 2016. Training is part of his obligations as a professional footballer under the employment of MUSA. Now, the field where the training took place did not belong to MUSA and therefore it had no control over the sufficiency of lighting control equipment.

[34] According to SD2 it started to rain at 4.30pm. The players had begun to retreat from the field when there was a sudden down pour of rain at approximately 5pm after when the lightning struck Stefan and himself. The plaintiff had tendered evidence through SP5 on the weather conditions that day and sought to prove that there was a risk of lightning associated with thunderstorm which the defendants should have foreseen. It was argued that lightning in tropical rains is not uncommon and for that reason the defendants ought to have foreseen such risk and terminated the training session sooner. Thus, there was a direct causation between the lightning that struck Stefan and the sudden cardiac arrest suffered by him.

[35] The facts show that there was no doctor present at the training field. The efforts to resuscitate Stefan was only through CPR done by the physiotherapist, SD2 on the field for approximately two minutes (this is based on SP3's notes and not disputed by SD2) and according to SD2, the CPR was also continued in SD3's car enroute to the General Hospital.

[36] Now, the defendants argue that as far as MUSA's duties under the FAM Club Licensing Regulations 2017 are concerned there was compliance with reg 9.2 where according to the evidence of second defendant, MUSA had appointed a panel doctor. The defendants argue that there is no compulsory direction that such doctor must be present at trainings.

[37] This court disagrees with that argument for the simple reason that reg 9.2 clearly states that the license applicant, that is the football club or association, must have appointed at least one doctor who is responsible for medical support during matches *and training*. The fact that the Regulation states that the doctor must provide medical support during training must mean the doctor must be physically present at training to render medical support. It makes no sense to appoint a panel doctor who is absent from the football field and who must be called from some other location to the field in the event of medical emergency.

[38] In this court's view, a sports physiotherapist like SD2 does not qualify as a medical doctor as the Regulation clearly states that the qualification of the medical doctor must be recognised by the appropriate health authorities and

must be duly registered with the AFC member Association. Therefore, failure of MUSA to have a medical doctor present at trainings constitute a failure in complying with the Regulation.

[39] MUSA owed its players including Stefan the duty of care to ensure that a doctor is present at trainings and that the doctor if present would be sufficiently equipped to render emergency medical support including sudden cardiac arrest. The facts show that not only was there no doctor in attendance at the training session, there was also insufficient equipment to render medical support in the event of a cardiac arrest. The training team was not equipped with an AED. There was therefore clearly a breach of duty of care by MUSA towards Stefan.

[40] Next to be considered is, was there direct causation between the lightning strike and Stefan's hypoxic-ischemic encephalopathy ('HIE') that led to his death?

[41] After evaluating the testimonies of SP2 (pathologist), SP3 and SP6 (attending doctors at General Hospital) and SD2 the primary cause of Stefan's HIE and his eventual death was not the lightning itself, but rather MUSA's failure to ensure the presence of a medical doctor, the lack of essential emergency equipment such as an AED and the inadequate medical response provided. Whilst the lightning strike may have triggered the initial injury and cardiac arrest, it was the absence of these critical measures that contributed to the HIE and ultimately to Stefan's death.

[42] Pausing here for a moment, with regards to the evidence of SP3 and SP6, the defendant had raised an objection on the admissibility of their notes and reports on the history of the injury which was narrated by some person whose identity were not recorded by them and cannot be recalled. Those notes described such person as friends of Stefan. The defendants say that such evidence is hearsay and not admissible. That hearsay evidence was then relied by SP2 in his port mortem report. Reference was made to the decisions in *Subramaniam v Public Prosecutor* [1956] 1 WLR 965 and *Public Prosecutor v Manimaran a/l Mohana Sundram & Anor* [2018] MLJU 1035; [2018] MLRHU 1570.

[43] Upon consideration, the court concurs with the plaintiff's argument that ss 32 and 73A of the Evidence Act 1950 permit the acceptance of the notes and reports prepared by SP2, SP3, and SP6 as admissible evidence. Each of these medical professionals authored their respective documents in the course of their duties, arid the records were made as part of a continuous process in the performance of their professional responsibilities. Furthermore, the content of their reports detailing the nature, type, and extent of the injuries sustained by

Stefan, as well as the cause of his death was not subject to dispute. Therefore, the court finds these documents to be reliable and admissible under the aforementioned provisions.

[44] Continuing on, Stefan was struck by lightning at around 5.10pm. and admitted to the General Hospital's emergency ward by 5:20pm. At 5:35pm, he experienced pulseless ventricular tachycardia, an ineffective heart rhythm. He was defibrillated at that time and then successfully restoring normal circulation. This indicates that Stefan went without defibrillation for at least ten minutes before receiving emergency care.

[45] This court take judicial notice of the Ministry of Health Guidelines on Basic Life Support Training Manual referred to by the plaintiff that defibrillation within 3–5 minutes of collapse can produce survival rates as high as 50%-70%. Each minute of deal to defibrillation reduces the probability of survival to discharge by 10% to 12%. Defibrillation is a medical procedure using electrical shocks to restore a normal heart rhythm, particularly when a life-threatening arrhythmia like ventricular fibrillation or pulseless ventricular tachycardia is present. It is a critical life-saving intervention in cases of sudden cardiac arrest.

[46] Overall, the court does not accept the defendants' claim that SD2 had provided reasonable medical assistance to Stefan and Stefan's death was an Act of God. SD2 was not a medical doctor and he was not aided by the use of AED. SD2 admitted in cross-examination that as a physiotherapist he is not trained to provide medical assistance in lightning strike situations. Although the plaintiff challenged SD2 on whether he did administer CPR in the car enroute to the General Hospital, even giving SD2 the benefit that he did administer CPR in the car, the evidence of SP3 clearly expresses the view that a CPR done in a moving car that has restricted space and not in ambulance will likely not be effective. SD2's decision to cease CPR after two minutes and transport Stefan in a private vehicle instead of an ambulance and ineffective CPR administered by SD2 during transport had severely affected Stefan's chances. On the balance of probabilities, this court finds the CPR rendered to Stefan was gravely inadequate and ineffective both on field and enroute to the General Hospital.

[47] To summarise, this court finds that MUSA represented in this suit by the first to 15th defendants had a duty of care towards Stefan to ensure the presence of a medical doctor and adequate equipment in the form of an AED at the training session. MUSA breached that duty of care when it failed to ensure the presence of a medical doctor and AED. There was an additional breach of that duty when MUSA failed to adequately train its staff or team members in the use of AED and/or in responding to cardiac related emergencies and Stefan's death was materially contributed by that breach.

There was a direct causation between Stefan's death and that breach of duty. This court finds on the balance of probabilities that the breaches were not sufficiently disproved by the defendants.

[48] This court concludes therefore that MUSA's breaches were material contributing factors to Stefan's hypoxic-ischemic encephalopathy ('HIE') and subsequent death (see *Wu Siew Ying t/a Fuh Lin Bud-Grafting Centre v Gunung Tunggal Quarry & Construction Sdn Bhd & Anor* [2011] 2 MLJ 1; [2011] 1 CLJ 409).

CLAIM FOR BREACH OF CONTRACT

The plaintiff's case

[49] The plaintiff claims that MUSA had breached cl 2 and Schedule B of the player's contract when it did not take for Stefan a personal accident insurance policy which would have had a RM120,000 coverage. The second defendant provided no answer on whether MUSA had in fact taken out such insurance. The claim was therefore not challenged and rebutted. No other witness was called by the defendants to answer this issue.

The defendant's case

[50] The defendant contends that the plaintiff had already received

[51] AUD757.61 from MUSA as insurance proceeds on behalf of Stefan, thereby resolving any insurance claim.

[52] However, the plaintiff disputes this, and plaintiff's counsel clarified during proceedings that the amount was related to workmen's compensation or SOCSO, not a personal accident insurance policy. Therefore, the issue of the personal accident insurance remains unresolved.

The court's deliberations and findings

[53] After perusing the second defendant's evidence, this court does not find any explanation from him on the matter and it is evident that he had no knowledge on whether the policy was issued. Thus, after considering the issue, this court finds that the said AUD757.61 could not have been a payment under a personal accident insurance. It would be quite ridiculous to accept that Stefan was only entitled to AUD757.61 under a personal accident insurance with a coverage of RM120,000. It was incumbent on the defendants to answer the

claim since it was pleaded as part of the plaintiff's case. The failure to give any answer only raises the inference that there was no such policy issued in favor of Stefan.

[54] Therefore, this court finds on the balance of probabilities that no such insurance was actually taken out for the benefit of Stefan and therefore constitutes a breach of MUSA's contractual obligation under cl 2 and Schedule B of the player's contract.

CLAIM FOR DEPENDENCY

The plaintiff's case

[55] In his evidence, the plaintiff claims that he had lost a monthly support of AUD2,000-AUD3,000 per month based on a promise allegedly made by Stefan to help him buy an apartment in Australia. Stefan's player's contract started on 1 February 2016 and he passed away on 5 April 2016. The plaintiff claims Stefan had expressed his intention to start the payments in March 2016, using his March salary, but his death intervened before any payments were made.

[56] The plaintiff claims that as a parent he is entitled under s 7 of the Civil Law Act 1956 to claim for loss of support. At the conclusion of the trial, the plaintiff claims AUD3,000 per month x 12 x 16 = AUD576,000 as being a fair and reasonable amount taking into account Stefan's personal expenses and Stefan's income at AUD6,000 for 2016 and 2017 and AUD8,000 for 2018.

The defendant's case

[57] The defendants argue that there is no evidence showing that Stefan had in fact intended to support the plaintiff and that he had indeed suffered loss of financial support. There is no evidence of the losses suffered by the plaintiff. Reference was made to the decision in *Au Meng Kai v Gan See Sin (sebagai bapa yang sah dan penanggungan kepada Gan En Teck, si mati, untuk diri sendiri) & Anor* [2021] MLJU 2300; [2021] CLJU 1933.

The court's deliberations and finding

[58] As held by the court in *Au Meng Kai v Gan See Sin (sebagai bapa yang sah dan penanggungan kepada Gan En Teck, si mati, untuk diri sendiri) & Anor* [2021] MLJU 2300; [2021] CLJU 1933; *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233; [1994] 3 CLJ 687; *Yap Ami & Anor v Tan Hui Pang* [1982] 2 MLJ 316; [1982] CLJ Rep 367 and *Muhamad bin Hashim v Teow Teik Chai & Anor* [1996] 4 MLJ 7; [1996] 1 CLJ 615, pecuniary loss is the actual

benefit of which the plaintiff have been deprived of and that the plaintiff must prove the loss suffered.

[59] Lee Hun Hoe CJ in *Yap Ami & Anor v Tan Hui Pang* [1982] 2 MLJ 316; [1982] CLJ Rep 367 had held that 'the mere existence of the relationship of husband and wife or parent and child is not enough to show pecuniary loss and does not even raise a presumption of such loss'. In *Muhamad bin Hashim v Teow Teik Chai & Anor* [1996] 4 MLJ 7; [1996] 1 CLJ 615, the court opined that in the context of s 7, loss of support means:

> ... the pecuniary provision which furnishes a livelihood, a source of means of living, subsistence, sustenance, maintenance or living, and the 'loss of support' means the pecuniary benefit lost, a consequence of the death of the provider.

[60] Based on the plaintiff's evidence, the loss the plaintiff claims to have suffered is the loss of monies that Stefan intended to pay towards the plaintiff's acquiring a 'nice apartment in Sydney. Now, would that constitute a loss of support? The plaintiff had stated that at the material time Stefan passed away, the plaintiff was working earning an average net salary of AUD6,000 per month. Since June 2020, the plaintiff is paid a commission-based salary. According to him between June 2020 to June 2021 his net income would be between AUD29,899 to AUD30,996 which works out to be an average of AUD2,491.50 monthly based on the lower of the two amounts.

[61] What is evident to this court is that Stefan's money would not have gone towards supporting the plaintiff's living and subsistence. This court does not consider the intended payment towards a 'nice apartment in Sydney' as stated by the plaintiff amounts to such support. There is no evidence that without that monthly payment, the plaintiff would not have been able to maintain a means of living.

[62] Thus, this court does not consider the loss of monies intended to be paid towards acquisition of an apartment amounts to loss of support. In this court's view, in absence of any corroborative evidence to support Stefan's intention to contribute AUD2,000 a month to the plaintiff, this court will have to determine what could have been reasonably expected to be paid by Stefan to the plaintiff as his father at the material time. As held by the Supreme Court in *Yap Ami & Anor v Tan Hui Pang* [1982] 2 MLJ 316; [1982] CLJ Rep 367, '... the measure of damages is the pecuniary loss suffered by the defendants as a result of the death. The pecuniary loss is the actual benefit of which the dependants have in fact been deprived, whether the benefit was as a result of legal obligation or of what may reasonably have been expected to take place in the future'.

[63] After considering all arguments, this court finds that an amount of AUD1,000 per month would be reasonable financial support taking into account Stefan's needs as a professional football player, expenses and savings. As provided under s 7(3)(iv)(d) of the Civil Law Act 1956, in the case of a person who was of the age of thirty years and below at the time of death, the number of years' purchase or multiplier shall be 16. Therefore AUD1,000 x 12 x 16 brings the total amount for loss support at AUD192,000.

CLAIM FOR AGGRAVATED DAMAGES

The plaintiff's case

[64] The plaintiff claims for aggravated damages in the amount of RM500,000 for the breaches of duty owed to Stefan and the plaintiff contends that this case is a fit and proper case for aggravated damages to be awarded. Reference was made to the decisions in *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784 and *Koperal Zainal bin Mohd Ali & Ors v Selvi a/p Narayan (joint administrator and dependant of Chandran a/l Perumal, deceased) & Anor* [2021] 3 MLJ 365; [2021] 6 CLJ 157.

The court's deliberations and finding

[65] The Court of Appeal in *Sambaga Valli* expressed the view that exemplary or aggravated damages are:

> ... additional damages awarded with reference to the conduct of the defendant, to signify disapproval, condemnation or denunciation of the defendant's tortious act, and to punish the defendant. Exemplary damages may be awarded where the defendant has acted with vindictiveness or malice, or where he has acted with a 'contumelious disregard' for the right to the plaintiff. The primary purpose of an award of exemplary damages may be deterrent, or punitive and retributory, and the award may also have an important function in vindicating the rights of the plaintiff.

[66] In that case, the Court of Appeal agreed with the findings of the High Court that the defendants as government servants, acted in an oppressive and unconstitutional manner depriving the plaintiff's right to property under art 13 of The Federal Constitution and therefore the award for aggravated damages of RM300,000 was justified.

[67] In *Koperal Zainal Abidin bin Mohd Ali*, the inquest into the deceased's death concluded that the police acted inhumanely by denying him essential medication. The Federal Court upheld an award of RM200,000 in aggravated damages.

[68] In each of those cases, the courts found that there were deliberate and conscious acts by the defendants, oppressive in one and inhumane in the other, which are not present in this case. Additionally, the case of *Sambaga Villa* was not for claim for negligence but for conversion of property and detinue.

[69] On another point, the plaintiff's claim for loss of support is brought under s 7 of the Civil Law Act as pleaded at para (ii)(a) under relief of the re-amended statement of claim (see encl 42). The plaintiff's pleading did not frame a claim under s 8 of the same Act which was the case in *Koperal Zainal Abidin bin Mohd Ali*. The plaintiff is bound by his pleadings and for those reasons the plaintiff's claim for aggravated damages has no basis.

CLAIM FOR BREACH OF UNDERTAKING

The plaintiff's case

[70] The plaintiff further claims that the second defendant had issued a letter of undertaking stating that the Melaka Football Association will undertake to remit the unpaid salary, workers compensations and all other dues to the deceased family. The plaintiff contends that based on Schedule A of the player's contract, Stefan's salary for the balance period of the contract would be AUD222,000 calculated as follows:

(a) May 2016 to 31 January 2018 (21 months) — AUD126,000 (6,000 AUD per month); and

(b) 1 February 2018 to 31 January 2019 (12 months) — AUD96,000 (8,000 per month).

[71] In his evidence, the plaintiff claims that the letter was issued following a casual meeting he and SP7 had with the second defendant at a restaurant. Although the said undated letter was directed to the Australian High Commission, the plaintiff claims that Stefan's estate is entitled to that undertaking. It is the plaintiff's case that the undertaking to remit unpaid salary means all salaries due to Stefan under the full term of the contract from second May 2016 until first February 2019. The plaintiff states in his statement of claim that MUSA paid a sum of AUD6,000 being Stefan's salary for April 2016 and no further payments were made then after.

The defendant's case

[72] The second defendant on the other hand denies that the unpaid salaries meant all salaries payable until the end of Stefan's contract. The second

defendant states that the letter was issued to the Australian High Commission only for the purpose of securing quick repatriation of Stefan's remains to Australia.

[73] The defendants argue that the letter was not made in favor of the plaintiff and therefore the plaintiff has no basis to personally enforce the same against MUSA. Further, it was argued that the letter was unambiguous as to what the words unpaid salary meant and in absence of a specific provision in the player's contract the unpaid salary must refer only the salary for the month of April when Stefan had his misfortune. To suggest otherwise would amount varying the terms of the player's contract. Reference was made to the decision in *Cheah Kim Boon v WFC Properties Sdn Bhd & Anor* [2020] MLJU 1332; [2020] MLRHU 1060.

[74] The plaintiff counter argues that the argument that the letter was never issued in the name of the plaintiff but only directed to the Australian High Commission was never pleaded in the defendants' amended statement of defense and therefore the same cannot be raised for the first time during arguments after conclusion of the trial.

The court's deliberations and finding

[75] After having considered the arguments, whilst this court agrees that the point on privity of contract was not pleaded, the matter is plainly clear on the face of the letter. It was not issued to the plaintiff and it is principle of contract law that apart from privity there must be consideration moving between the plaintiff and the second defendant and/or MUSA for the undertaking to be a binding contract.

[76] This court is entitled to take cognisance of any issue of law eventhough not specifically pleaded. The Court of Appeal in *Tan Ah Kek & Anor v Wong Thang Song & Anor* [2016] 2 MLJ 686; [2016] CLJU 232; [2016] 1 LNS 232 held:

> [11] Though in their pleadings the appellants raised several issues that we have alluded to above, the learned judicial commissioner had decided this case only on one issue that is illegality. Therefore in this appeal, and as submitted by the appellants, the issue that requires our decision is whether the illegality issue which was not pleaded ought to be decided in favour of the appellants and that the learned judicial commissioner ought to have found that the said agreement void for illegality.
>
> [12] It is settled law that the court may take cognisance of an illegality in an act or contract even if the illegality is not pleaded. Learned counsel for the appellants had rightly referred to us the Privy Council case of *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd & Anor* [1989] 1 MLJ 457; [1989] 1 CLJ Rep 1 where the court

states the principle as follows:

> it is well established as a general principle that the illegality of an agreement sued upon is a matter of which the court is obliged, once it is appraised of the facts tending to support the suggestion, to take notice *ex proprio motu* and even though not pleaded (see eg *Edler v Auerbach* [1950] 1 KB 359) for clearly, no court could knowingly be a party to the enforcement of an unlawful agreement

...

> [16] In our view the learned judicial commissioner fell into error when he ruled that it was unfair on the respondents for the appellants to raise the issue of illegality some six years after the execution of the agreement and after the respondents had expended money on the said land by building the factory. In deciding the way he did the learned judicial commissioner had missed the point of law entirely which is that the court is duty bound to take notice of the illegality whether or not it is pleaded if the facts showing the illegality are before the court. The duty of the court is to give effect to the law; not to be a party to the enforcement of an illegal contract.

[77] A document cannot be regarded as a valid contract under the law when the requirements to constitute a binding contract between the concerned parties are absent. To state further, as much as the plaintiff opposes the defendant's arguments on the matter of pleading, the same can also be said of the plaintiff. Whilst admitting at para 25 of his re-amended statement of claim (see encl 42) that the letter was issued to the Australian High Commission, the plaintiff himself had failed to plead how that letter of undertaking constituted a binding contract between MUSA and/or the second defendant and the plaintiff upon which the plaintiff had cause of action.

[78] In any event, this court finds that the proper and reasonable meaning to be given to the words unpaid salary must mean, as stated by the second defendant, the salary that Stefan would have otherwise earned for the month of April 2016 and nothing more. It would be very unreasonable to expect any football club to compensate a player's estate the full amount of salaries for the full term of the contract when the club have lost his service upon the player's death. This court finds that such an obligation would impose an onerous financial obligation on MUSA and it is a matter that should have been negotiated and included in Stefan's player's contract. Moreover, such an undertaking would constitute a variation of the contract, requiring approval from both the second defendant and MUSA. The court also does not accept that the second defendant personally made such a promise, whether in the letter or during the meeting with the plaintiff and SP7.

[79] For those reasons, this court does not find that the plaintiff have discharged his burden of proving that the said undertaking was a valid and binding contract between MUSA and/or the second defendant and the plaintiff.

A CONCLUSION AND DECISION

[80] Following this court's deliberations on the claims and issues, this court concludes that the plaintiff has succeeded in proving on the balance of probabilities that there was a duty of care owed by MUSA to Stefan and that there were breaches of that duty. The breaches of that duty resulted in Stefan suffering the HIE injury that he did and eventually his death. This court therefore finds for the plaintiff on the issue of liability against the first to the 15th defendants.

[81] The plaintiff sought for the following reliefs:

(a) AUD576,000 or equivalent sum in Malaysian Ringgit for loss of support;

(b) RM120,000 for breach of contract in failing to purchase a Personal Accident insurance policy;

(c) AUD222,000 or the equivalent sum in Malaysian Ringgit for breach of contract and breach of undertaking; and

(d) RM500,000 for aggravated damages.

[82] Based on this court's findings, this court makes the following orders on damages:

(a) for loss of dependency in the amount of AUD192,000 or the equivalent in Ringgit Malaysia calculated at the rate of exchange prevailing on the date of this decision;

(b) the amount of RM120,000 being loss arising from the failure to take out a personal accident insurance as required under cl 2 and Schedule B of the player's contract;

(c) pnterest on clause at the rate of 5%pa calculated from the date of decision until full settlement;

(d) all other reliefs are denied; and

(e) costs of RM50,000 awarded in favor of the plaintiff.

Order accordingly.

Reported by Dzulqarnain Ab Fatar